

REMARKS-General

1. The amended independent claim 28 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All claims 28-30 and 43-46 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

Response to Rejection of Claims 27-30 and 39-46 under Obviousness Double Patenting

2. The copending Application No. 10/725, 101 is now abandoned.

Response to Rejection of Claims 27-30 and 39-46 under 35USC103

3. The Examiner rejected claims 27-30 and 39-46 over Finnigan (US Des. 299,307) in view of Laguerre (US 3,255,501) and/or Vatan (FR 253647). Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

4. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

5. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Finnigan which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Laguerre and/or Vatan at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

6. The applicant respectfully submits that in order to determine whether the differences between the subject matters sought to be patent as a whole of the instant invention and the primary prior art, Finnigan, are obvious in view of the supplemental cited arts, Laguerre and Vatan, we have to identify all the differences between the claims of the instant inventions and Smith. The applicant respectfully identifies the differences between the claims of the instant invention and Finnigan as follows:

(a) In claim 27, "each of the locking teeth has two parallel guiding edges" is claimed, wherein Finnigan merely teaches the slits has two edges extending in a non-parallel manner.

(b) In claim 27, "the guiding edge of each of said locking teeth is extended inclinedly at a direction corresponding to **an inserting direction** of said tail portion of said guiding member" is claimed, wherein Finnigan is silent regarding any inserting direction of the fastening strap.

(c) In claim 27, Finnigan is silent regarding any locker slot having a **triangular shape** to engage with the slit.

(d) In claim 27, Finnigan fails to teach the locking teeth are formed by a **plurality of cuts** are spacedly and inclinedly formed along the two longitudinal edges of the tail portion of said binding member respectively that the guiding edges are parallel with each other. In fact, Finnigan merely teach the slit has two edges extended at an angle to create a triangular gap therebetween.

(e) In claim 27, Finnigan fails to teach the adjacent edge of the locker slot is substantially larger than a width of the guiding member, wherein the locker slot has a width gradually increasing towards the head end of the guiding member.

(f) Finnigan fails to teach the step of slidably inserting the tail portion of the guiding member through the locker slot to form a binding loop as claimed in claim 27. In fact, the binding operation of the fastening strap of Finnigan is totally different from that of the instant invention.

(g) Finnigan fails to teach the step twisting the tail portion of the guiding member within the locker slot back to its original orientation as claimed in claim 27. In fact, no twisting movement of the fastening strap is included in Finnigan to form the loop.

(h) Finnigan fails to teach the adjacent edge of the locker slot is engaged between the guiding edges of the respective elongated slit so as to retain the loop diameter of the binding loop as claimed in claim 27. Finnigan merely teaches two slits are engaged with each other to form the loop.

(i) Finnigan fails to teach the step of releasing the guiding member from said growing plant by twisting the tail portion of the guiding member to align with the adjacent edge of the locker slot to unlock the respective locking tooth with the locker slot as claimed in claim 28 in addition to what is claimed in claim 27. Finnigan merely teaches two slits are detachably engaged with each other to form the loop without teaching any twisting movement to release the engagement between the two slits.

(j) Finnigan fails to teach a height of the locker slot at least equals to the width of the guiding member as claimed in claims 29 to 30 in addition to what is claimed in claim 27. Finnigan is silent regarding any structural relationship between the locker slot and the guiding member.

(k) Finnigan fails to teach the tail end of the guiding member has a tapered shape having a width substantially smaller than the transverse width of the locker slot as claimed in claims 43 to 46 in addition to what is claimed in claim 27. Finnigan merely teaches the fastening strap has uniform width.

7. Whether the claims 27-30 and 43-46 as amended of the instant invention are obvious depends on whether the above differences (a) to (k) between the instant invention and Finnigan are obvious in view of Laguerre and Vatan at the time of the invention was made.

8. Furthermore, the applicant respectfully submits that when applying 35 USC 103, the following tenets of patent law must be adhered to:

- (a) The claimed invention must be considered as a whole;
- (b) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (c) The references must be viewed without the benefit of hindsight vision afforded by the claimed invention; and
- (d) Reasonable expectation of success is the standard with which obviousness is determined.

Also, "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." Libbey-Owens-Ford v. BOC Group, 4 USPQ 2d 1097, 1103 (DCNJ 1987).

9. Laguerre merely teaches the hooking opening of a resilient strap fastener comprising a portion 8a being separated from a portion 8b by two bosses 9, 10 without any suggestion of the triangular hooking opening incorporating with the elongated slit. In fact, the hooking opening of Laguerre is not triangular shape. The applicant respectfully submits the locking teeth are formed by a plurality of cuts inclinedly cutting along two longitudinal edges of the tail portion of the binding member respectively. Accordingly, Fig. 1 shows the thickness of the binding member and Fig. 5 shows the width of the locking tooth. The width of each of the locking teeth is smaller than the thickness of the binding member. Furthermore, neither Finnigan nor Laguerre suggests a structural relationship between the triangular shaped locker slot with the elongated slit to obtain an unexpected result.

10. Vatan merely teaches the end 5' of the arm 5 cut in the form of a notch can penetrate without any mention of any slit formed on the binding member by a cut. As shown in Fig. 1 of Vatan, each of the notches at the end 5' of the arm 5 has a triangular shape which is totally different from the structure of the elongated slit.

11. "To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the

references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited art references for combination in the manner claimed... [T]he suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness..." *In re Gorman*, 933 F.2d 982, 986, 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991).

12. Accordingly, the applicant believes that neither Finnigan, Laguerre nor Vatan, separately or in combination, suggests or makes any mention whatsoever of the difference subject features (a) to (k) as claimed in the claims 27-30 and 43-46 of the instant invention. The applicant respectfully submits the structural relationship between the slit having two parallel guiding edges and the locker slot having a triangular shape is unique and is unobvious to one of ordinary skill in the art to modify Finnigan with Laguerre and Vatan to achieve the objectives of the instant invention.

13. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

The Cited but Non-Applied References

14. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

15. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 27-30 and 43-46 at an early date is solicited.

16. Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

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